

## Nuclear Regulatory Commission

## § 4.339

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipients created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) NRC will limit any termination under § 4.336(a)(1) to the particular recipient and particular program or activity NRC finds in violation of Act or these regulations. NRC will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from NRC.

(c) NRC will take no action under paragraph (a) until—

(1) The Commission, or designee, has advised the recipient of its failure to comply with the Act or these regulations and has determined that voluntary compliance cannot be obtained.

(2) 30 days have elapsed after the Commission, or designee, has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. A report will be filed whenever any action is taken under paragraph (a) of this section.

(d) NRC also may defer granting new Federal financial assistance to a recipient when termination proceedings under § 4.336(a)(1) are initiated.

(1) New Federal financial assistance includes all assistance for which NRC requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance does not include increases in funding as a result of change computation of formula awards or assistance approved prior to the beginning of termination proceedings under § 4.336(a)(1).

(2) NRC will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 4.336(a)(1). NRC will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the

hearings has been extended by mutual consent of the recipient and NRC. NRC will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

[52 FR 25358, July 7, 1987, as amended at 68 FR 51345, Aug. 26, 2003]

### § 4.337 Hearings, decisions, post-termination proceedings.

Certain NRC procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to NRC enforcement of these regulations. They are §§ 4.61 through 4.64 and §§ 4.71 through 4.75.

### § 4.338 Remedial and affirmative action by recipients.

(a) Where NRC finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that NRC may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, NRC may require both recipients to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient, operating a program that serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program or activity.

[52 FR 25358, July 7, 1987, as amended at 68 FR 51345, Aug. 26, 2003]

### § 4.339 Alternate funds disbursal procedure.

(a) When NRC withholds funds from a recipient under these regulations, the Commission, or designee, may disburse the withheld funds directly to an alternate recipient, any public or nonprofit private organization or agency, or State or political subdivision of the State.

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(b) Any alternative recipient will be required to demonstrate—

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[52 FR 25358, July 7, 1987, as amended at 68 FR 51345, Aug. 26, 2003]

#### § 4.340 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if—

(1) 180 days have elapsed since the complainant filed the complaint and NRC has made no finding with regard to the complaint; or

(2) NRC issues any finding in favor of the recipient.

(b) If NRC fails to make a finding within 180 days or issues a finding in favor of the recipient, NRC will—

(1) Promptly advise the complainant; and

(2) Advise the complainant of his or her right to bring a civil action under section 305(e) of the Act of injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant that—

(i) The complainant may bring a civil action only in a United States District Court for the district in which the recipient is found or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Commission, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) The notice must state the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation

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of the Act by the same recipient is the subject of pending action in any court of the United States.

#### § 4.341 Reports.

The NRC shall submit to the Secretary of Health and Human Services, not later than December 31 of each year, a report which—

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act; and

(b) Contains data on the frequency, type, and resolution of complaints and on any compliance reviews, sufficient to permit analysis of the agency's progress in reducing age discrimination in programs or activities receiving Federal financial assistance from NRC; and

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which NRC has identified in any programs or activities receiving Federal financial assistance from NRC and to progress toward eliminating it; and

(d) Contains evaluative or interpretative information which NRC determines is useful in analyzing agency progress in reducing age discrimination in programs or activities receiving Federal financial assistance from NRC; and

(e) Contains whatever other data the Secretary of HHS may require.

[52 FR 25358, July 7, 1987, as amended at 68 FR 51345, Aug. 26, 2003]

#### Subpart D [Reserved]

#### Subpart E—Enforcement of Non-discrimination on the Basis of Disability in Programs or Activities Conducted by the U.S. Nuclear Regulatory Commission

SOURCE: 51 FR 22888, 22896, June 23, 1986, unless otherwise noted.

#### § 4.501 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which